

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Adv. Pro. No. 08-01789 (SMB)

Plaintiff-Applicant,

SIPA LIQUIDATION

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

(Substantively Consolidated)

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Adv. Pro. No. 10-05120 (SMB)

Plaintiff,

v.

OREADES SICAV represented by its Liquidator
INTER INVESTISSEMENTS S.A., INTER
INVESTISSEMENTS S.A. (f/k/a INTER
CONSEIL S.A.), BGL BNP PARIBAS S.A., and
BNP PARIBAS SECURITIES SERVICES S.A.,

Defendants.

**STIPULATION DISMISSING BGL BNP PARIBAS S.A.
AND BNP PARIBAS SECURITIES SERVICES S.A. WITH PREJUDICE**

Plaintiff Irving H. Picard (the “Trustee”), as trustee of the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC (“BLMIS”), under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. §§ 78aaa *et seq.*, and the estate of Bernard L. Madoff, individually, and Inter Investissements S.A. (f/k/a Inter Conseil S.A.) (“Inter”), BGL BNP Paribas S.A. (“BGL BNP Paribas”) and BNP Paribas Securities Services

S.A. (“BNP Paribas Securities”) (collectively, the “Parties”), by and through their respective undersigned counsel state as follows:

WHEREAS, the Trustee commenced this action, Adversary Proceeding Number 10-05120 (SMB) (the “Adversary Proceeding”), by filing a complaint on December 2, 2010 (the “Complaint”);

WHEREAS, the Complaint, *inter alia*, sought to recover transfers from defendant Oreades SICAV under section 550(a) of the Bankruptcy Code but did not seek to recover any transfers from non-parties Fairfield Sentry Limited, Fairfield Sigma Limited, Fairfield Lambda Limited, Kingate Global Fund, Ltd. or Kingate Euro Fund, Ltd. (the “Fairfield and Kingate Funds”);

WHEREAS, on February 10, 2011, defendants BNP Paribas Investment Partners Luxembourg S.A. (“BNP Paribas Lux”), BGL BNP Paribas and BNP Paribas Securities Services S.A., by their undersigned counsel, agreed to waive service of the Summons and Complaint;

WHEREAS, on May 15, 2012 and June 7, 2012, respectively, the United States District Court for the Southern District of New York, the Honorable Jed S. Rakoff, entered Orders in which he withdrew the reference in certain adversary proceedings pursuant to 28 U.S.C. § 157(d) to determine whether SIPA and/or the Bankruptcy Code as incorporated by SIPA apply extraterritorially, permitting the Trustee to avoid initial transfers that were received abroad or to recover from initial, immediate or mediate foreign transferees, *see Securities Investor Prot.*

Corp. v. Bernard L. Madoff Inv. Sec. LLC, No. 12-mc-0115 (JSR), ECF Nos. 97 and 167;

WHEREAS, on July 7, 2014, Judge Rakoff entered an Opinion and Order (the “Extraterritoriality Order”) and returned the withdrawn adversary proceedings to the Bankruptcy

Court for further proceedings consistent with the Extraterritoriality Order, *see Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 513 B.R. 222 (S.D.N.Y. 2014);

WHEREAS, on June 25, 2015, defendant BNP Paribas Lux was voluntary dismissed from the Adversary Proceeding, *see Picard v. Oreades*, Adv. Pro. No. 10-05120 (SMB), ECF No. 68;

WHEREAS, on November 11, 2016, this Bankruptcy Court entered a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Decision”), *see Securities Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 11-02732, ECF No. 110, in which the Bankruptcy Court, *inter alia*:

- “decline[d] to dismiss those claims or deny leave to amend on the basis of comity, without prejudice to any party’s right to supplement the record through an appropriate motion,” as to “subsequent transferors that are in liquidation in Luxembourg: Luxalpha SICAV, Oreades SICAV, and Luxembourg Investment Fund U.S. Equity Plus” (*id.* at 40-41);
- dismissed defendant BGL BNP Paribas from the Adversary Proceeding on the basis of comity (*id.* at 37); and
- denied motions to dismiss claims in the Adversary Proceeding against BNP Paribas Securities on the basis of extraterritoriality (*id.* at 68, 71);

WHEREAS, the Bankruptcy Court also dismissed claims against defendants that received subsequent transfers from the Fairfield and Kingate Funds on comity grounds, and the Decision included the Adversary Proceeding, and BGL BNP Paribas and BNP Paribas Securities, in tables that listed defendants that were dismissed on such grounds (*see id.* at 37-38, Tables 1 and 2), notwithstanding that the Complaint made no allegations as to transfers from the Fairfield and Kingate Funds;

IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, by their undersigned counsel, pursuant to Rule 7041 of the Federal Rules of Bankruptcy Procedure (making Rule 41(a)(1)(A)(ii) of the Federal Rules of Civil Procedure applicable in adversary

proceedings), that defendants BGL BNP Paribas and BNP Paribas Securities are hereby dismissed from the Adversary Proceeding with prejudice.

Except as expressly set forth herein, the parties to this stipulation reserve all rights and defenses they may have, and entry into this stipulation shall not impair or otherwise affect such rights and defenses, including without limitation, any defenses based on lack of jurisdiction.

This stipulation may be signed by the parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed facsimile, photostatic or electronic copy of this stipulation shall be deemed an original.

Upon the above dismissal, the caption of the Adversary Proceeding is hereby amended to remove defendants BGL BNP Paribas and BNP Paribas Securities from the caption. The amended caption of the Adversary Proceeding shall appear as indicated in Exhibit A.

Dated: January 19, 2017
New York, New York

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EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>SECURITIES INVESTOR PROTECTION CORPORATION, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.</p> <hr/> <p>In re: BERNARD L. MADOFF, Debtor.</p> <hr/> <p>IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,</p>	<p>Adv. Pro. No. 08-01789 (SMB)</p> <p>SIPA LIQUIDATION (Substantively Consolidated)</p> <hr/> <p>Plaintiff, v. OREADES SICAV represented by its Liquidator INTER INVESTISSEMENTS S.A., and INTER INVESTISSEMENTS S.A. (f/k/a INTER CONSEIL S.A.), Defendants.</p>
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